

JOHN TYMCZYSZYN  
John T Law, PLLC  
700 112<sup>th</sup> Ave NE, Suite 300  
Bellevue, WA 98004  
Telephone: 425.533.2156  
Email: [johnt@johntlaw.com](mailto:johnt@johntlaw.com)

THOMAS G. JARRARD  
Law Office of Thomas G. Jarrard, PLLC  
1020 N. Washington Street  
Spokane, WA 99201  
Telephone: 425.239.7290  
Email: [Tjarrard@att.net](mailto:Tjarrard@att.net)

*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTER DISTRICT OF WASHINGTON**

Nadir Jailani, | CASE NO. 2:21-cv-875

Plaintiff,  
**COMPLAINT FOR VIOLATIONS OF  
USERRA, WLAD AND DEMAND  
FOR TRIAL BY JURY**

Peak Parking LLC., and William Spielhagen,  
individually.

EXEMPT FROM FILING FEES  
UNDER 38 U.S.C. § 4323(h)(1)

## Defendants.

## I. INTRODUCTION

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 (USERRA), the Washington Law Against Discrimination (WLAD), by a servicemember.

2. The filing of this Complaint is exempt from filing fees under 38 U.S.C. § 4323(h)(1).

3. Plaintiff, Nadir Jailani (hereinafter "Mr. Jailani" or "Plaintiff"), by the undersigned attorneys, avers as stated herein.

1                   **II. PARTIES AND JURISDICTION**

2         4. Mr. Jailani resided in the State of Washington and was an employee of  
3 Defendants, Peak Parking LLC., and William Spielhagen, at all times pertinent hereto.

4         5. At all times relevant to this lawsuit Mr. Jailani was a member of the United  
5 States Army Reserve.

6         6. Defendant, Peak Parking LLC., is a Washington corporation that is licensed  
7 to conduct business in the State of Washington, pursuant to UBI No. 604 605 517.

8         7. Peak Parking LLC maintains a place of business within this District, located  
9 at 720 3<sup>rd</sup> Ave, Seattle, WA 98104.

10        8. For the purposes of 38 U.S.C. §§ 4303(4) and 4323(c)(2) Defendant, Peak  
11 Parking LLC., is a private employer operating within the State of Washington.

12        9. Defendant, William Spielhagen is the owner of Peak Parking LLC and Mr.  
13 Jailani's supervisor.

14        10. Defendant, William Spielhagen exercised control over the employment  
15 benefits and opportunities of Mr. Jailani, was a primary decision maker regarding  
16 Defendants' violation of Mr. Jailani's rights, and for the purposes of 38 U.S.C. § 4303(4),  
17 is a private employer.

18        11. All acts complained of occurred within the Western District of Washington.

19        12. The Federal Court for the Western District of Washington has personal  
20 jurisdiction over the parties and subject matter jurisdiction for the claims in this complaint  
21 pursuant to 38 U.S.C. § 4323(b), 28 U.S.C. § 1331, 28 U.S.C. § 1367(a), and  
22 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper in the Western District of Washington under 38 U.S.C. § 4323(c) and 28 U.S.C. § 1391(b), because the acts and omissions complained herein occurred in this District, and Defendants' conduct business here.

### **III. FACTS**

14. In 2015, Mr. Jailani was living in war-torn Pakistan with his pregnant wife.

15. In September, 2015, the couple had a daughter, Mahekaan.

16. On December, 2015, Mr. Jailani moved to the Seattle area for opportunity and a better life, temporarily leaving his wife and child in Pakistan.

17. By December, 2017, Mr. Jailani was able to put together some money and have his wife and child join him in the United States.

18. In 2018, he and his wife had a second daughter, Mehrma.

19. In December, 2019, Mr. Jailani, his wife and two children moved into a one-bedroom apartment in Burien, Washington

20. On May 8, 2020, Mr. Jailani received an offer letter from the defendants. The letter offered Mr. Jailani a base salary of \$55,000 per year with various bonuses and benefits.

21. The job represented financial stability and a better life for Mr. Jailani and his family.

22. On May 14, 2020, Mr. Jailani started work as a Parking Operations Manager at Peak Parking (then operating as a branch of Stream Realty Partners).

23. On July 30, 2020, Mr. Jailani enlisted in the U.S. Army Reserves as an Automated Logistical Specialist (92A).

24. Mr. Jailani enlisted in the U.S. Army Reserve at the age of 37 in hopes of providing a better life for his family and leveraging military training in his career.

1       25. On Aug 9, 2020, Mr. Jailani notified Avarie Anderson, Corporate  
2 Operations Manager for Peak Parking via email of his enlistment and upcoming  
3 deployment.

4       26. In August of 2020, the parties exchanged emails regarding Mr. Jailani's  
5 upcoming deployment.

6       27. In September and December 2020, Mr. Speilhagen talked with Mr. Jailani  
7 and stated he would "do his best" to reemploy Mr. Jailani after his deployment.

8       28. On December 28, 2020, Mr. Jailani departed on deployment for Basic  
9 Combat Training after personally training his replacement. To date, that replacement  
10 still works in Mr. Jailani's position.

11       29. On January 1, 2021, Peak Parking separated from Stream Realty and  
12 began operating as a separate entity.

13       30. On January 1, 2021, all Peak Parking employees received a letter from  
14 Stream Realty Partners informing them that they were no longer employees of Stream  
15 Realty Partners.

16       31. On January 1, 2021, all Peak Parking employees (except for Mr. Jailani)  
17 received a letter informing them that they would continue as an employee of Peak  
18 Parking.

19       32. In January of 2021, Mr. Jailani was in military training and could not  
20 advocate for himself within the company.

21       33. During this time period Mr. Jailani was focused on military training, but also  
22 planning a better life for his family upon his return home.

23       34. Mr. Jailani dreamed of joining the middle class, owning a home and getting  
24 his wife and children out of the one-bedroom apartment in Burien.

1       35. The VA Loan Program provided Mr. Jailani an opportunity to qualify for a  
2 home loan with no down payment.

3       36. In April, 2021, Mr. Jailani contact Veterans United Home Loans (VUHL) to  
4 begin the home buying process and to become prequalified for a VA home loan.

5       37. In April, 2021, Mr. Jailani provided VUHL with military documents in order  
6 to qualify for the loan.

7       38. In May, 2021, Mr. Jailani was contacted by VUHL and asked for proof of  
8 civilian employment to complete his application for a VA home loan.

9       39. On May 10, 2021, Mr. Jailani contacted Mr. Speilhagen via email, informed  
10 him of his return date and asked for a proof of employment letter similar to the one the  
11 other Peak Parking Employees had received.

12       40. Mr. Jailani intended on using this letter to qualify for a home loan.

13       41. Mr. Jailani was never provided with this letter.

14       42. On May 19, 2021, Mr. Jailani was released from active-duty military  
15 service.

16       43. Between May 10, 2021 – May 26, 2021, Mr. Jailani attempted to contact  
17 Mr. Speilhagen via various and repeated methods: email, phone, text etc., regarding the  
18 matter of his reemployment. He received no response.

19       44. Mr. Jailani was unable to obtain proof of civilian employment during this  
20 time period.

21       45. Which In turn, forced Mr. Jailani to suspend the home buying process.

22       46. On May 26, 2021, Mr. Speilhagen finally replied. He stated he was busy,  
23 but would call Mr. Jailani on May 31, 2021, when he was free.

24       47. Mr. Jailani never received a phone call on May 31, 2021.

1       48. On June 2, 2021, Mr. Jailani sent an email to Mr. Speilhagen with a PDF  
2 copy of USERRA and informed Mr. Speilhagen of his right to reemployment.

3       49. On June 2, 2021, Mr. Speilhagen responded to the email. Mr. Speilhagen  
4 refused to reemploy Mr. Jailani. The last line of this email reads: **Feel free to move**  
5 **forward as you see fit and we will do the same.**

6       50. Mr. Jailani suffered harms and losses as a result of Defendants'  
7 discrimination.

8       51. Defendants' actions are the direct and proximate cause of Mr. Jailani's  
9 damages.

10       52. As a result of Defendants' unlawful conduct in violation of USERRA and  
11 the necessity of this action to seek a remedy, Mr. Jailani fears further retaliation against  
12 his employment rights by Defendants or its managers, directors or employees, for  
13 example continued attempts to cause her failure at work, to serve as a pretext for the  
14 true retaliatory reason of punishing Mr. Jailani for exercising his USERRA rights. As  
15 such, any employment relationship that Mr. Jailani may have enjoyed with Defendants  
16 prior to the filing of this action is irreparably damaged through no fault of Mr. Jailani.

17       53. Upon information and belief, Defendants are a party to contracts within the  
18 State of Washington, which prohibit Defendants from discriminating against veterans and  
19 military service members and further evidence of its knowing and reckless disregard for  
20 the protections afforded a service member under USERRA.

21       54. Upon information and belief, Defendants are a party to contracts with the  
22 United States, which prohibit Defendants from discriminating against veterans and  
23 military service members and further evidence of its knowing and reckless disregard for  
24 the protections afforded a service member under USERRA.

55. At all times relevant hereto, Defendants had a duty to conduct themselves in compliance with the law, including USERRA and WLAD and ensure its managers and agents followed the Act.

56. The above-referenced actions by Defendants, and their agents, breached those duties.

57. Upon information and belief, Defendants maintained workplace posters that set out employer responsibilities under USERRA as required by 38 U.S.C. § 4334.

58. Defendants' alleged reasons for denying Mr. Jailani benefits of employment are a pretext created to avoid the truth and legal liability.

59. At all times relevant to this lawsuit, Defendants were aware of the law of  
USERRA.

60. Defendants are highly trained professionals, with experience and immediate access to the provisions of USERRA, with the support of a sophisticated Human Resources Department, including immediate access to professional human resources personnel, and specially trained employment counsel.

61. To the extent that Defendants allege application of any agreement that constitutes any limitation on Plaintiff's rights under USERRA, it is illegal, null and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.

### **III. CAUSES OF ACTION**

**(Count One Violation of USERRA 38 U.S.C. § 4311(a))**

62. USERRA, 38 U.S.C. § 4311(a), prohibits an employer from discriminating against any person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service with respect to, among other things, employment, reemployment, retention in

employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation

63. Defendants discriminated against Mr. Jailani on account of his military service by terminating Mr. Jailani 's employment because of his absences due to military obligations.

**(Count Two Violation of USERRA, 38 U.S.C. § 4311(b))**

8       64.    USERRA, 38 U.S.C. § 4311(b) provides that an employer may not  
9 discriminate in employment against or take any adverse employment action against any  
10 person because such person (1) has taken an action to enforce a protection afforded  
11 any person under this chapter, (2) has testified or otherwise made a statement in or in  
12 connection with any proceeding under this chapter, (3) has assisted or otherwise  
13 participated in an investigation under this chapter, or (4) has exercised a right provided  
14 for in this chapter.

65. Mr. Jailani exercised his USERRA rights as set forth above.

16       66. Defendants retaliated against Mr. Jailani by terminating his employment  
17 because he exercised his rights under USERRA.

**(Count Three Violation of USERRA, 38 U.S.C. §§ 4312, 4313)**

19       66.    USERRA, 38 U.S.C. § 4312 provides that any person whose absence from  
20 a position of employment is necessitated by reason of service in the uniformed services  
21 shall be entitled to the reemployment rights and benefits and other employment benefits  
22 under USERRA so long as: (1) the person has given advance written or verbal notice of  
23 such service to such person's employer; (2) the cumulative length of the absence and of  
24 all previous absences from a position of employment with that employer by reason of

1 service in the uniformed services does not exceed five years; (3) the person serves  
2 honorably; and (4) the person reports to, or submits an application for reemployment to,  
3 such employer in accordance with the provisions of subsection (e).

4       67.    USERRA, 38 U.S.C. § 4313(a)(2)(A) provides that in the case of a person  
5 whose period of service in the uniformed for more than 90 days, the employer must  
6 promptly reemploy the servicemember (A) in the position of employment in which the  
7 person would have been employed if the continuous employment of such person with  
8 the employer had not been interrupted by such service, or a position of like seniority,  
9 status and pay, the duties of which the person is qualified to perform; or (B) in the  
10 position of employment in which the person was employed on the date of the  
11 commencement of the service in the uniformed services, or a position of  
12 like seniority, status and pay, the duties of which the person is qualified to perform, only  
13 if the person is not qualified to perform the duties of a position referred to in  
14 subparagraph (A) after reasonable efforts by the employer to qualify the person.

15       68.    Mr. Jailani provided advanced, verbal and written notice, of his military  
16 service, or is excused under USERRA by the relevant circumstances by the requirement  
17 that he report for uniformed service in an extremely short period of time.

18       69.    Mr. Jailani performed his service honorably.

19       70.    Mr. Jailani timely gave notice of his intent to return to employment after he  
20 completed his military service obligations.

21       71.    Defendants refused to promptly or properly reemploy Mr. Jailani, instead  
22 terminating him.

23       72.    By refusing to reemploy Mr. Jailani promptly following his military service,  
24 Defendant violated 38 U.S.C. §§ 4312 and 4313 by, among other things, failing to

1 promptly reemploy Mr. Jailani either in the position of employment in which he would  
2 have been employed if his continuous employment with Defendant had not been  
3 interrupted by his military service, or a position of like seniority, status and pay, the duties  
4 of which Mr. Jailani was qualified to perform.

5                   **(Count Four - Violation of RCW §§ 49.60.030 & 49.60.180)**

6                 73. Under the Washington Law Against Discrimination an employer cannot  
7 take an adverse action against an employee on, *inter alia*, account of that employee's  
8 military/veteran status.

9                 75. Defendants violated Mr. Jailani's WLAD-guaranteed protection from  
10 military related employment discrimination for the reasons stated above.

11                76. Defendants' violations of the WLAD have caused Mr. Jailani damage in an  
12 amount to be proven at trial.

13                   **(LIQUIDATED DAMAGES – 38 U.S.C. § 4323)**

14                77. Plaintiff is entitled to liquidated damages under USERRA because the  
15 Defendants knew, or showed reckless disregard for whether its conduct was prohibited  
16 under USERRA.

17                   **IV. PRAYER FOR RELIEF**

18               WHEREFORE Mr. Jailani prays that judgement be entered against Defendants  
19 on all claims and requests that this Court award the following relief:

20               A. Declare that Defendants failed to comply with USERRA, 38 U.S.C. §§  
21 4311, 4312, 4313 and 4323 and require that Defendants to comply with each of those  
22 sections.

23               B. Require that Defendant compensate Mr. Jailani for any losses of wages or  
24 benefits in the amount to be proven at trial, including back pay, front pay, pre- and post-

1 judgment interest, lost benefits of employment, negative tax consequences of any award,  
2 for Defendants' failure to comply with USERRA.

3 C. For an Order requiring Defendants to pay Mr. Jailani liquidated damages  
4 for their willful violations of USERRA, pursuant to 38 U.S.C. § 4323(d)(B) and 20 C.F.R.  
5 § 1002.312(c).

6 D. For an Order requiring Defendants to include a written statement in Mr.  
7 Jailani's employment file stating Defendant violated Mr. Jailani's USERRA rights leading  
8 to this litigation, and Order that Defendants must disclose that in all future employment  
9 inquiries.

10 E. Enjoin Defendant from taking any future retaliatory action against Plaintiff  
11 or other servicemembers who attempt to enforce their rights under USERRA.

12 F. Pursuant to 38 U.S.C. § 4323(h), and as otherwise provided by law, require  
13 Defendant to pay Plaintiff's attorney fees, expert witness fees, litigation expenses and  
14 costs to bring this action.

15 G. For such other and further relief as this Court deems just and equitable.

16 **VI JURY TRIAL DEMAND**

17 Pursuant to Rule 38 of the Federal Rules of Civil Procedure or any similar rule or  
18 law, Plaintiff demands a trial by jury for all causes of action and issues for which trial by  
19 jury is available.

20 Respectfully submitted this June 29, 2021.

21 */s John M. Tymczyszyn*  
22 JOHN M. TYMCZYSZYN  
23 John T Law, PLLC  
24 700 112<sup>th</sup> Ave NE, Suite 300  
Bellevue, WA 98004  
Telephone: 425.533.2156

1           */s Thomas G. Jarrard*  
2           THOMAS G. JARRARD  
3           Law Office of Thomas G. Jarrard, PLLC  
4           1020 N. Washington Street  
5           Spokane, WA 99201  
6           Telephone: 425.239.7290

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Atorneys for Plaintiff